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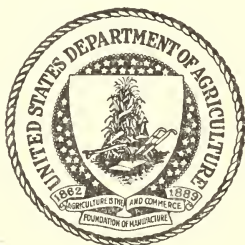
UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

CODE OF FAIR COMPETITION SERIES—CODE No. 4

CODE OF FAIR COMPETITION
FOR THE
ALCOHOLIC BEVERAGES IMPORTING
INDUSTRY

Approved by the President of the United States
December 2, 1933

1. Executive Order
2. Letter of Transmittal (Secretary of Agriculture)
3. Code



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933

EXECUTIVE ORDER

Approval of Code of Fair Competition for the Alcoholic Beverages Importing Industry

Whereas, the Secretary of Agriculture having submitted for my approval a Code of Fair Competition for the Alcoholic Beverages Importing Industry and having rendered his report and recommendations and findings thereon:

Now, therefore, I, FRANKLIN D. ROOSEVELT, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do hereby find that:

1. An application has been duly made, pursuant to and in full compliance with the provisions of title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Alcoholic Beverages Importing Industry; and,

2. Due notice and opportunity for hearings to interested parties have been given pursuant to the provisions of the act and regulations thereunder; and,

3. Hearings have been held upon said Code, pursuant to such notice and pursuant to the pertinent provisions of the act and regulations thereunder; and,

4. Said code of fair competition constitutes a code of fair competition, as contemplated by the act and complies in all respects with the pertinent provisions of the act, including clauses (1) and (2) of subsection (a) of section 3 of title I of the act; and,

5. It appears, after due consideration, that said code of fair competition will tend to effectuate the policy of Congress as declared in section 1 of title I of the act.

Now, therefore, I, FRANKLIN D. ROOSEVELT, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do hereby approve said Code of Fair Competition for the Alcoholic Beverages Importing Industry.



President of the United States.

THE WHITE HOUSE,
December 2, 1933.

(III)

AGRICULTURAL ADJUSTMENT ADMINISTRATION

LETTER OF TRANSMITTAL

NOVEMBER 29, 1933.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: I have the honor to submit the following:

1. There is transmitted herewith a Code of Fair Competition for the Alcoholic Beverages Importing Industry, which I recommend for your approval. The Code, because of the emergency requiring its immediate consideration by you, does not contain labor provisions, other than the mandatory labor provisions of Section 7 (a) of the National Industrial Recovery Act. Additional labor provisions covering hours of labor, rates of pay, and other conditions of employment, not yet finally completed for your consideration, will be submitted later by the National Recovery Administrator. There accompanies the Code the report of the Administrator of the Agricultural Adjustment Act, and a true, correct, and complete stenographic report of all the evidence introduced at a public hearing on said Code, held pursuant to Section 3 (a), Title I of the National Industrial Recovery Act.

2. By virtue of Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345, of October 20, 1933, which, pursuant to Title I of the National Industrial Recovery Act of June 16, 1933 (Public, No. 67, 73d Congress) delegated to me, as Secretary of Agriculture, certain of the powers vested in the President of the United States by the aforesaid Act, and after considering the aforesaid Code of Fair Competition and a true, correct, and complete stenographic report of all the evidence introduced at such public hearing, and being fully advised in the premises, I make the following findings:

(1) That an application has been duly made by the Wine and Spirits Importers Society of the United States pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for the approval of the President, of the Code of Fair Competition for the Distilled Spirits Industry. Said Society is truly representative of the industry, and no inequitable restrictions are imposed on membership in the Society. The Code Authority provided for in the Code will be established pursuant to regulations of a Government agency and these regulations will provide that the Code Authority shall be truly representative of the industry.

(2) That the Alcoholic Beverages Importing Industry, covered by such Code, is included within the trades, industries, or subdivisions thereof enumerated in Executive Order No. 6182 of June 26, 1933, as supplemented by Executive Order No. 6207 of July 21, 1933, and Executive Order No. 6345 of October 20, 1933.

(3) That the provisions of the Code establishing standards of fair competition (a) are regulations of foreign commerce and (b) are reasonable.

(4) That the Code is not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them and will not permit monopolies or monopolistic practices.

(5) That the Code will not prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof nor prevent anyone from marketing or trading the produce of his farm.

(6) That due notice and opportunity for hearing, in connection with the aforesaid Code, has been afforded interested parties, in accordance with Title I of the National Industrial Recovery Act and applicable regulations issued thereunder.

(7) That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) To remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

(8) That said Code, when approved by the President, will constitute a Code of Fair Competition for the Distilled Spirits Industry within the meaning of Section 3 (a) of Title I of the National Industrial Recovery Act.

Respectfully,

H a w a l l a c e

Secretary of Agriculture.

CODE OF FAIR COMPETITION FOR THE ALCOHOLIC BEVERAGES IMPORTING INDUSTRY

ARTICLE I

PURPOSES

Whereas, it is the declared policy of Congress as set forth in Section I of Title I of the National Industrial Recovery Act:

To remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor and otherwise to rehabilitate industry and to conserve natural resources;

And—

Whereas, Congress has not had opportunity to legislate on liquor control following the repeal of the Eighteenth Amendment; and

Whereas, the Twenty-first Amendment provides in part as follows:

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws, thereof, is hereby prohibited.

And—

Whereas it is in the best interests of the public that all industries engaged in the importation of alcoholic beverages shall limit their activities to their reasonable and immediate requirements until such time as Congress may consider appropriate legislation relating to such industries,

Now, therefore, to effectuate the foregoing policies the following provisions are established as a Code of Fair Competition for the Alcoholic Beverages Importing Industry and upon approval by the President shall be the standards of fair competition for such industry and shall be binding upon every member of such industry in the United States and Puerto Rico; and neither the promulgation of this Code nor any action taken thereunder by the Federal Alcohol Control Administration or by any member of the industry shall be construed as giving any such member a vested right to continue to participate in the importation of alcoholic beverages in the United States.

ARTICLE II

DEFINITIONS

SECTION 1. As used in this Code:

(a) The term "President" means the President of the United States.

(b) The term "Act" means Title I of the National Industrial Recovery Act, approved June 16, 1933.

(c) The term "person" means individual, partnership, corporation, association, and any other business unit.

(d) The terms "alcoholic beverages importing industry" and "industry" mean (a) the importing or bringing of alcoholic beverages into the United States (except in customs bond for transshipment to a foreign country) for sale or any other commercial purpose, or (b) the bottling, warehousing or other handling or distribution of alcoholic beverages so imported or brought in, or the sale or other disposition thereof, except at retail, by an importer or an affiliate or subsidiary thereof.

(e) The term "alcoholic beverages" means alcohol or alcoholic beverages containing more than one half of one per centum of alcohol by volume.

(f) The term "employee" means any person engaged in the industry in any capacity receiving compensation for his services, irrespective of the nature or method of payment of such compensation.

(g) The term "employer" means any person by whom any such employee is compensated or employed.

(h) The term "trade buyer" means any buyer as distinguished from ultimate consumer buyer.

(i) The term "member of the industry" means any person engaged in the industry as an employer or on his own behalf.

(j) The term "Administration" means the Federal Alcohol Control Administration.

(k) The term "Director" means the Director of the Federal Alcohol Control Administration.

(l) The term "Code Authority" means the authority established pursuant to Article VIII of this Code.

(m) The term "State" includes Territory and District of Columbia.

(n) The term "books and records" means any books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to the business of the person in question.

(o) The term "subsidiary" means any person, of or over whom, a member of the industry has, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

(p) The term "affiliate" means any person who has, either directly or indirectly, actual or legal control of or over a member of the industry, whether by stock ownership or in any other manner, or a subsidiary thereof.

ARTICLE III

MANDATORY LABOR PROVISIONS

SECTION 1. Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents in the designation of such representatives or in self-organization or other mutual aid or protection.

SEC. 2. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

SEC. 3. Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

ARTICLE IV

PERMITS

SECTION 1. No person shall engage in business as a member of the alcoholic beverages importing industry except pursuant to a permit issued by the Director. Such permit shall be conditioned on the observance by the permittee of the provisions of this Code (other than Article III) and regulations issued thereunder. Such permit shall not be taken or held to create in any permittee any vested right as to any standard of profits or volume of business or any right to engage in the importation or distribution of any class of alcoholic beverages after the termination of the permit.

SEC. 2. Any such permit may, after due notice and opportunity for hearing, be suspended or revoked by the Director, with the approval of the Administration, for violation of the terms or conditions thereof.

SEC. 3. Nothing in this Article shall be construed to limit or modify in any way whatsoever any procedure or remedy which may be available for the enforcement of the provisions of this Code.

ARTICLE V

UNFAIR METHODS OF COMPETITION

The following practices constitute unfair methods of competition and shall not be engaged in by any member of the industry:

SECTION 1. *False Advertising*.—To publish or disseminate in any manner any false advertisement of any alcoholic beverages. An advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity, omission, or inference it tends to create a misleading impression.

SEC. 2. *Misbranding*.—To import, sell, or otherwise introduce into commerce any alcoholic beverages that are misbranded. Alcoholic beverages shall be deemed to be misbranded:

(a) *Food and Drugs Act Requirements*.—If they are misbranded within the meaning of the Food and Drugs Act.

(b) *Standards of fill*.—If their container is so made, formed, or filled as to mislead the purchaser, or its contents fall below the standard of fill prescribed by regulations of the Administration.

(c) *Standards of identity*.—If they purport to be or are represented as alcoholic beverages for which a definition of identity has been prescribed by regulations of the Administration and they fail to conform to the definition.

(d) *Standards of quality*.—If they purport to be or are represented as alcoholic beverages for which standards of quality have been prescribed by regulations of the Administration, and (1) fail to state on the label, if so required by the regulations, their standard of quality in such terms as the regulations specify, or (2) fall below the standard stated on the label.

(e) *Label requirements*.—If in package form and they fail to bear a label conforming to such requirements as the Administration may by regulations prescribe. Regulations for the purpose of this subsection shall be prescribed by the Administration, but only after due notice and opportunity for hearing to members of the industry.

SEC. 3. *Commercial Bribery*.—To give or permit to be given money or anything of substantial value for the purpose of influencing persons (a) to purchase or sell alcoholic beverages of a particular brand or from a particular person, or (b) to refrain from purchasing of or dealing with particular persons.

SEC. 4. *Shipment or Delivery on Consignment*.—To enter into any agreement for the shipment or delivery of alcoholic beverages on consignment, except pursuant to regulations of the Administration.

SEC. 5. *Allowances and Rebates for Advertising and Distribution Services*.—To pay a trade buyer for a special advertising or distributing service (a) unless in pursuance of a written contract defining the service to be rendered and the payment therefor; and (b) unless such service is rendered and the payment is reasonable and not excessive in amount; and (c) unless such contract is separate and distinct from any sales contract and is not designed or used to reduce a sales price; and (d) unless a copy of each such contract is filed with the Code Authority. This section shall not apply to any contract made prior to the effective date of this Code.

SEC. 6. *Prizes and Premiums*.—To offer any prize, premium gift, or other similar inducement to either a trade or a consumer buyer.

SEC. 7. *Sales to Unauthorized Venders*.—To sell or otherwise dispose of alcoholic beverages to any person not authorized by license, in full force and effect, to sell, manufacture, or distribute alcoholic beverages if such a license is required of such person by State law; or to sell or otherwise dispose of alcoholic beverages to any member of an industry covered by any code under the Act pertaining to alcohol or alcoholic beverages, if such member is engaged in business without a permit in full force and effect under such code and such a permit is required by the code.

SEC. 8. *Violations of State Law*.—To transport or import alcoholic beverages into any State or political subdivision thereof, for delivery, sale, or use therein in violation of the law of such State.

ARTICLE VI

BOTTLING

SECTION 1. Members of the industry shall sell or dispose of alcoholic beverages in bottles only, except in case of sales to rectifiers or blenders, or to dispensaries or other agencies operated and maintained by any State or political subdivision thereof, or for export, or for shipments in bond, or to such wholesale bottlers under such regulations as are recommended by the Code Authority and approved by the Administration. Nothing in this section shall restrict the sale or other disposition of warehouse receipts covering distilled spirits in bond, provided such receipts require the bottling of the alcoholic beverages prior to removal from the warehouse.

ARTICLE VII

PRICES AND TERMS OF SALE

SECTION 1. Each member of the industry shall keep posted with the Code Authority, in accordance with regulations prescribed by it and approved by the Administration, and upon request shall make available to trade buyers, a price list which shall set forth (a) all the classes, types, and brands of alcoholic beverages offered for sale by such member, (b) the sale prices thereof to various classes of trade buyers and (c) all discounts and other terms of sale of such alcoholic beverages.

SEC. 2. The Code Authority shall file with the Administration a copy of each price list so posted. The Code Authority shall, upon request, make available such price lists to trade buyers.

SEC. 3. No sale or other disposition of alcoholic beverages shall be made by any member of the industry, except in accordance with its prices and terms so posted and in effect.

SEC. 4. No member of the industry shall post or keep posted any price or term which will (a) constitute destructive price cutting, or (b) be oppressive to the consumer. A posted price or term shall not be held to be in violation of this section unless it is kept posted after it has been declared ineffective by the Code Authority or the Administration, as hereafter in this Article provided.

SEC. 5. If, after investigation, the Code Authority finds that the prices or terms for any class, type or brand of alcoholic beverages posted under this Article is not in conformity with the requirements of section 4, it shall, with the approval of the Administration, declare such prices or terms ineffective.

SEC. 6. If the Administration is of the opinion that the prices or terms posted for any class, type, or brand of alcoholic beverages are contrary to the requirements of section 4, it may report such fact to the Code Authority. If the Code Authority does not within ten days take action acceptable to the Administration, the Administration may then declare such prices or terms ineffective, if it finds that they are not in conformity with the requirements of section 4.

SEC. 7. The payment by any member of the industry of allowances or rebates, refunds, concessions, or discounts, whether in the form

of money or otherwise, not extended to all under the terms and conditions of sale as disclosed in the posted price list, is prohibited.

SEC. 8. The posting or publishing of any false or fictitious price list, or the use of invoices which falsely indicate prices, discounts, or terms or conditions of any sale, or the inserting in any invoice of statements which make the invoice a false record, wholly or in part, of the transaction represented on the face thereof, or the withholding from any invoice of statements which properly should be included therein, so that, in the absence of such statements, the invoice does not truly reflect the transaction involved, is prohibited.

ARTICLE VIII

REPORTS

SECTION 1. The members of the industry shall severally, from time to time, upon the request of the Administration (or the National Recovery Administrator in case of information relating to hours of labor, rates of pay, or other conditions of employment), furnish such information, on and in accordance with forms of reports to be supplied, as may be deemed necessary for the purposes of (1) assisting in the furtherance of the powers and duties of the Administration or the National Recovery Administrator with respect to this Code or (2) enabling the Administration or the National Recovery Administrator to ascertain and determine the extent to which the declared policy of the Act and the purposes of this Code will be effectuated, such reports to be verified under oath.

SEC. 2. The members of the industry shall severally permit, for the same purposes or to enable the Administration or the National Recovery Administrator to verify the information furnished on said forms of reports, all their books and records and the books and records of their affiliates and subsidiaries to be examined by the Administration or the National Recovery Administrator during the usual hours of business.

SEC. 3. Each member of the industry shall severally keep books and records which will clearly reflect all financial transactions of his business and the financial condition thereof and such other matters relating to the business of the member as the Administration may by regulation prescribe, and shall require that their respective subsidiaries and affiliates keep such records.

SEC. 4. All information furnished the Administration pursuant to this Article shall remain confidential in accordance with the applicable regulations prescribed by the Administration.

ARTICLE IX

CODE AUTHORITY

SECTION 1. There shall be a Code Authority selected by the members of the industry, pursuant to a plan submitted by the members of the industry and approved by the Administration. The members of the Code Authority shall be subject to the approval of the Administration and shall be subject to removal in the discretion of the Ad-

ministration. The powers and duties of the Code Authority shall be as follows:

(a) To administer the provisions of this Code (except as otherwise provided) subject to the approval of the Administration; and to foster and promote the observance of this Code by the members of the industry.

(b) To prescribe rules for the performance of its functions subject to the approval of the Administration.

(c) To recommend to the Administration amendments to this Code.

(d) To cooperate with and assist the Administration, as the Administration may from time to time request, in carrying out its functions under this Code.

(e) To make reports to the Administration from time to time on problems relating to the industry affecting the administration of this Code.

(f) To receive and investigate charges of apparent violations of this Code and to report to the Administration its findings of fact on such charges. This paragraph shall not be construed to derogate from or limit the powers of the Administration to investigate apparent violations and to take such action in the premises as it deems desirable.

SEC. 2. If the members of the industry fail to submit a plan under section 1 of this Article, within five days after the effective date of this Code, or if the plan submitted is not approved by the Administration, then the Administration may establish and provide for the selection of the members of the Code Authority, according to a plan prescribed by the Administration.

ARTICLE X

FEDERAL ALCOHOL CONTROL ADMINISTRATION

SECTION 1. The Federal Alcohol Control Administration shall prescribe such regulations as may be provided for in this Code or as may be reasonably necessary to carry out the provisions of this Code which it is authorized to administer, and may make such interpretations of such provisions and regulations as it deems necessary, such regulations and interpretations shall have the same force and effect as the provisions of this Code.

SEC. 2. If the Administration is of the opinion that the Code Authority has failed to take any action which the Administration deems necessary to administer the provisions of this Code, the Administration may so report to the Code Authority. If the Code Authority does not, within such time as the Administration deems proper, take action relating to such report satisfactory to the Administration, the Administration shall take such action as it may deem necessary to administer such provisions.

SEC. 3. The Administration may investigate any apparent violation of the provisions of this Code and may take such action in the premises as it deems desirable.

ARTICLE XI

DURATION OF IMMUNITIES

SECTION 1. The benefits, privileges, and immunities conferred by this Code shall cease upon its termination except with respect to acts done prior thereto.

ARTICLE XII

AGENTS

SECTION 1. The Administration and the National Recovery Administrator may by designation in writing name any person, including any officer or employee of the Government, to act as agent in connection with their respective powers and duties under this Code.

ARTICLE XIII

MODIFICATION

SECTION 1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provision of section 10 (b) of the Act, from time to time, to cancel or modify any order, approval, license, rule or regulation issued under the Act, and specifically, but without limitation, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

ARTICLE XIV

APPLICATION OF CODE TO OTHER INDUSTRIES

SECTION 1. If any member of the industry is also engaged in any other industry or trade, the provisions of this Code shall apply to and affect only that part of the business of such member of the industry which is included in the Alcoholic Beverages Importing Industry.

ARTICLE XV

EFFECTIVE DATE

SECTION 1. This Code shall be effective the day following its approval by the President of the United States.

